



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.    | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------|------------------|
| 10/722,590  | 11/25/2003  | Stephen Russak       | 00467/100M163-US1      | 5682             |
| 7278  | 7590        | 12/02/2005           | EXAMINER               |                  |
| DARBY & DARBY P.C.<br>P. O. BOX 5257<br>NEW YORK, NY 10150-5257 |             |                      | VERBITSKY, GAIL KAPLAN |                  |
|   |             |                      | ART UNIT               | PAPER NUMBER     |
|   |             |                      | 2859                   |                  |

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/722,590

Applicant(s)

RUSSAK ET AL.

Examiner

Gail Verbitsky

Art Unit

2859

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1-12 and 14-16.  
Claim(s) objected to: 22.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☒ Other: 2 attachments

Continuation of 3. NOTE: cl. 17: "circumferential edge" introduces a new issue because this limitation is different from the previously stated limitation "along a perimeter". Normally, the term "perimeter" in geometry means the entire perimeter, therefore, "along the perimeter" would mean "along the entire perimeter". Newly presented limitation "having a circumferential edge" could be interpreted that the first member has only a small part of the perimeter which is circumferential in shape. Therefore, the newly presented limitation to claim 17 broadened the claim language and requires a new search and consideration. Perhaps applicant should describe the first member as --having a circumferential edge along a perimeter, the edge defining a margin between an upper portion and a lower portion of the first member--. Also, cls. 18-20: it is not clear how the first member described in presently amended cl. 17 is an arcuate-shaped probe. It appears that claims 17 and 18-20 describe different embodiments (shown in Figs. 4 and 3 respectively). Also, perhaps applicant should show an arcuate-shaped temperature sensor (vs. arcuate-shaped probe) of claim 21. In addition, perhaps applicant should show numerals 28 and 30 described in the specification. Also, see attachments ##1-2 (Zaragoza et al. U.S. 5013161).

*Carl Verbitsky*  
CARL VERBITSKY  
PRIMARY EXAMINER



# United States Patent [19]

Zaragoza et al.

[11] Patent Number: 5,013,161

[45] Date of Patent: May 7, 1991

## [54] ELECTRONIC CLINICAL THERMOMETER

[75] Inventors: Robert Zaragoza, New York, N.Y.;  
Thomas V. McLinden, Oxford,  
Conn.; James A. O'Connell, Short  
Hills, N.J.

[73] Assignee: Becton, Dickinson and Company,  
Franklin Lakes, N.J.

[21] Appl. No.: 387,457

[22] Filed: Jul. 28, 1989

[51] Int. Cl.<sup>3</sup> ..... G01K 1/00; G01K 7/00

[52] U.S. Cl. .... 374/208; 374/170;  
374/183

[58] Field of Search ..... 374/208-209,  
374/158, 163, 170, 183, 190-194

## [56] References Cited

### U.S. PATENT DOCUMENTS

|            |         |               |       |         |
|------------|---------|---------------|-------|---------|
| D. 254,189 | 2/1980  | Prosby        | ..... | D10/57  |
| D. 254,779 | 4/1980  | Sulek et al.  | ..... | D10/57  |
| 2,797,682  | 7/1957  | Kannenber     | ..... | 374/190 |
| 3,221,555  | 12/1965 | Biber         | ..... | 73/362  |
| 3,946,613  | 3/1976  | Silver        | ..... | 374/208 |
| 4,072,054  | 2/1978  | Blouin et al. | ..... | 73/343  |
| 4,159,766  | 7/1979  | Kluge         | ..... | 374/209 |

|           |        |               |       |         |
|-----------|--------|---------------|-------|---------|
| 4,166,389 | 9/1979 | Montren       | ..... | 374/158 |
| 4,317,367 | 3/1982 | Schanberger   | ..... | 374/158 |
| 4,341,992 | 7/1982 | Goldstein     | ..... | 374/158 |
| 4,688,949 | 8/1987 | Hatakenaka    | ..... | 374/208 |
| 4,729,672 | 3/1988 | Takagi        | ..... | 374/208 |
| 4,743,121 | 5/1988 | Takagi et al. | ..... | 374/163 |

Primary Examiner—William A. Cuchlinski, Jr.

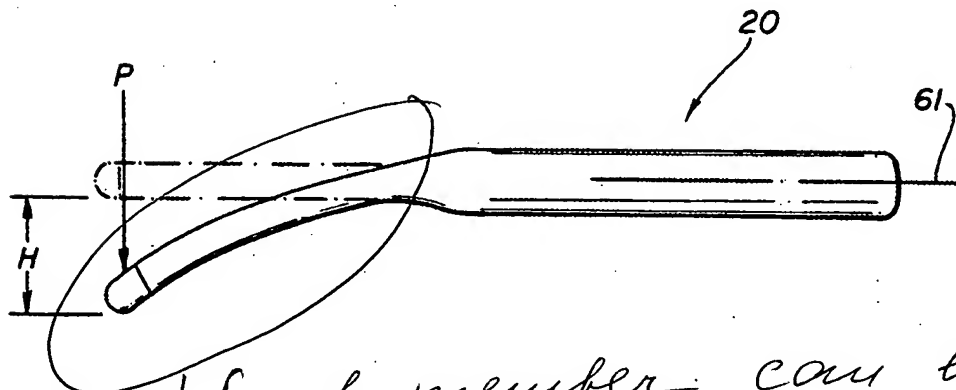
Assistant Examiner—Alvin Wirthlin

Attorney, Agent, or Firm—John L. Voellmicke

## [57] ABSTRACT

A thermometer for measuring the temperature of a living being comprises a housing having a hollow probe extending outwardly therefrom in a distal direction and a temperature sensing element located at the distal end of the probe. The housing holds a digital display and electrical means in electrical communication with the temperature sensing element for converting the temperature measured by the temperature sensing element into a readout on the display element. A resilient soft cover covers the probe and a portion of the housing to form a gripping surface for the user while allowing visualization of the display element. The resilient cover is softer than the probe.

23 Claims, 5 Drawing Sheets



1 first member can be  
arcuate-shaped

attachment # 2